

REMARKS/ARGUMENTS

Claims 18-20 and 37-38 are pending and under examination. Applicants have herein amended the title and included a portion of the specification of U.S. Patent No. 4,801,685 which was incorporated by reference into the subject application. In addition, applicants have herein amended claims 18-20. These amendments do not involve any issue of new matter. Support for these amendments may be found *inter alia* in the specification at page 7, lines 2-10, page 16, lines 18-22 and page 6, lines 1-15. Entry of this amendment is respectfully requested such that claims 18-20 and 37-38 will be pending.

Rejection under 35 U.S.C. 112, first paragraph

The Examiner rejected claims 18-20 and 37-38 under 35 U.S.C. 112, first paragraph, alleging that applicants are not in possession of the claimed invention. The Examiner is arguing that the polypeptide being claimed was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors had possession of the claimed invention. The Examiner is further arguing that the specification does not enable the claimed invention.

In response, applicants respectfully traverse the Examiner's above rejection. Nevertheless, applicants without conceding the correctness of the Examiner's position but to expedite prosecution of the subject application have herein amended the claims. Claim 18 now recites "cytokine." Applicants submit that the claim is sufficiently described and enabled. The specification provides examples of mutant cytokines, such as the IFN- α , which differs by one to six amino acids from the normal cytokine and is encoded by a nucleic acid which hybridizes under high stringency to the gene encoding the normal cytokine. *See* page 9 of the specification. *See also* page 6, lines 1-15 for support. The IFN mutants are representative embodiments of the claimed cytokine mutant polypeptides. It is clear that applicants were in possession of the claimed mutant cytokine polypeptides. Moreover, one skilled in the art would be able to practice the claimed invention without undue experimentation. It is well established that disclosure of every operable species is not required and that the mere disclosure of a single species can be sufficient. *See In re Vickers*, 141 F.2d 522 (CCPA 1944); *See also In re Cook*, 439 F.2d 730, (CCPA 1971). Applicants contend that these remarks and amendments obviate the above

rejection and respectfully request that the Examiner reconsider and withdraw this ground of rejection.

Rejection under 35 U.S.C. 112, second paragraph

The Examiner rejected claims 18-20 and 37-38 under 35 U.S.C. 112, second paragraph, alleging that the metes and bounds of the claim are unclear with respect to the terms “modification,” and “hybridize under high stringency,” “normal human interleukin-2” and “obtainable.”

In response, applicants respectfully traverse the Examiner’s above rejection. With respect to the term “modification” the claim has been amended such that it no longer recites the term “modification.” Newly proposed claim 18 now recites in part “differs by one to six amino acid residues” and accordingly, the metes and bounds of the claim with respect to this term are clear. With respect to the term “hybridize under stringent wash conditions” applicants have herein amended claim 18 to provide further recite “of 6X SSC at 0 °C” and accordingly, provides the wash conditions and therefore the metes and bounds of the claim with respect to this term are clear. With respect to the terms “normal interleukin-2” and “obtainable” applicants point out that the claims no longer recites such terms and thus, applicants amendment has rendered the Examiner’s rejection moot. Applicants contend that these amendments and remarks obviate the above rejection and respectfully request that the Examiner reconsider and withdraw this ground of rejection.


In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

Applicant believes no fee other than the \$465.00 fee for a three month extension is due with this response. However, if any additional fee is due, please charge our Deposit Account No. 18-1945, under Order No. PBLI-P08-005 from which the undersigned is authorized to draw.

Dated: September 22, 2003

Respectfully submitted,

By


Spencer H. Schneider

Registration No.: 45,923

Ropes & Gray LLP

45 Rockefeller Plaza

New York, NY 10111

(212) 497-3615

(212) 497-3650 (Fax)

Attorneys/Agents For Applicant